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**Before the
Federal Communications Commission
Washington, D.C. 20554**

MM Docket No. 92-19 ✓

In the Matter of

Amendment of Section 73.202(b), RM-7882
Table of Allotments,
FM Broadcast Stations.
(Memphis, Missouri)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 31, 1992; Released: February 11, 1992

Comment Date: April 3, 1992
Reply Comment Date: April 20, 1992

By the Assistant Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Boyer Broadcasting Company, Inc., ("petitioner"), proposing the substitution of Channel 263C3 for Channel 263A at Memphis, Missouri, and the modification of its license for Station KMEM(FM) to operate on the higher powered channel.¹ Petitioner failed to state its intention to apply for the channel, if allotted, and must do so in comments responsive to this *Notice*.

2. We believe the public interest would be served by proposing the substitution of Channel 263C3 for Channel 263A at Memphis, Missouri, since it would provide the community with a wide coverage area FM service. Channel 263C3 can be allotted to Memphis in compliance with the Commission's minimum distance separation requirements at the petitioner's present transmitter site without the imposition of a site restriction.² As requested, we also propose to modify petitioner's license for Station KMEM(FM) to specify operation on Channel 263C3 at Memphis. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 263C3 at Memphis or require the petitioner to demonstrate the availability of an additional equivalent class channel.

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Present	Channel No. Proposed
Memphis, Missouri	263A	263C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **April 3, 1992**, and reply comments on or before **April 20, 1992**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Eugene T. Smith, Esq.
715 G Street, S.E.
Washington, D.C. 20003
(Counsel for Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

¹ Petitioner has been ordered to amend its license to specify operation on Channel 263A in lieu of Channel 244A. *See Report and Order* (MM Docket No. 90-284), 6 FCC Rcd _____ (released December 19, 1991). This petition was originally filed as an untimely counterproposal in MM Docket No. 90-284. Based on the actions taken in that proceeding, we will propose the sub-

stitution of Channel 263C3 for Channel 263A at Memphis and the modification of its construction permit for Station KMEM(FM) accordingly.

² The coordinates for Channel 263C3 at Memphis are North Latitude 40-29-59 and West Longitude 92-09-58.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is

directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.